

# **7 FAM 1600 THE CONSULAR ROLE IN INTERNATIONAL EXTRADITION**

## **7 FAM 1610 INTRODUCTION**

(TL:CON-20; 10-6-86)

### **7 FAM 1611 VOLUME OF CASES**

a. The number of extradition and international law enforcement cases handled by Foreign Service posts has increased greatly since 1980. The burden of this work falls largely on the consular sections at post. This chapter provides detailed instructions on required actions and procedures.

b. Extradition is the process by which a person located in one country is surrendered to another country for trial or punishment. There are a substantial number of international extraditions to and from the United States each year. Speedy trial requirements in the United States and formal or informal cooperation between law enforcement agencies create significant responsibilities and the active involvement of posts abroad in international law enforcement. This involvement is primarily with the extradition of fugitives to the United States from foreign countries. It includes formal presentation of requests for provisional arrest and extradition of fugitives, monitoring of extradition proceedings in foreign courts, informal contacts with foreign officials, and followup reporting. Posts, except for the certification of the requesting country's extradition documents, are usually not involved in a foreign country's extradition requests to the United States.

### **7 FAM 1612 AUTHORITY**

a. Extradition is a formal process conducted pursuant to a treaty. The United States has extradition treaties in force with over 100 countries. The most recent edition of *Treaties in Force* indicates whether an extradition treaty is in force between the United States and a particular country.

b. Extradition treaties may list the crimes for which extradition may be granted, or, in the case of more modern treaties, simply provide for extradition for crimes which are felonies in both countries. Extradition treaties specify defenses to extradition which may be raised. The United States cannot extradite a person unless there is an extradition treaty in force with the requesting country, the offense falls within the terms of the treaty, and other conditions set forth in the treaty are met. As a rule, the U.S. Government does not request the surrender of fugitives when there is no extradition treaty in force with the country in which the fugitive is located. In such cases, the United States normally considers other means of effecting the surrender of a fugitive under the law or practice of the host country. See also Volume 6, Chapter XVI, of *Whiteman's Digest of International Law* (which should be in post libraries).

### **7 FAM 1613 ACTION OFFICES**

a. The Office of the Legal Adviser (L/LEI) is the action office on all extradition matters, and posts should always caption extradition reporting cables for L/LEI and address any inquiries to that office. Send information copies, as appropriate, to CA/OCS/CCS or CA/OCS/EMR. L/LEI works on extradition cases in close cooperation with the Department of Justice, where the action office in the Criminal Division is the Office of International Affairs (DOJ/OIA).

b. U.S. Federal and State prosecutors seeking the return of fugitives from abroad, initiate their requests with the Department of Justice. DOJ/OIA forwards approved requests and documents to L/LEI for transmittal to posts for presentation to foreign governments. Post action usually is handled by the consular section.

c. If an extradition case involves a U.S. citizen fugitive incarcerated abroad, CA/OCS/EMR may also have action on the case as it concerns the arrest case (see 7 FAM 400 ). When a U.S. citizen fugitive felon is returned to the United States, CA/OCS/CCS and CA/PPT/C may have action if a question arises as to how to document the fugitive for entry to the United States, especially if the U.S. passport has been revoked.

d. Countries seeking the return of fugitives from the United States instruct their embassies in Washington to present their requests to the Department of State. L/LEI transmits acceptable requests to DOJ/OIA for action through the appropriate office of the U.S. Attorney.

## **7 FAM 1614 TAGS**

a. The subject TAG for extradition messages is CJAN. As this TAG also is used for the related field of judicial assistance, for which the Bureau of Consular Affairs (CA/OCS/CCS) is the action office, the first word of the subject line of the message should be "extradition" (see 7 FAM 1626 Exhibit 1626.1 ).

b. Other TAGS may be used with CJAN. The CASC TAG (used for many consular services for U.S. citizens abroad, including arrest cases) is appropriate for messages involving the extradition of U.S. citizen fugitives, CVIS for that of alien fugitives. These TAGS may be used with CPAS (passport and citizenship determination services), SNAR (narcotic drug offenses), PTER (terrorist crimes), and other indicative TAGS, as well as the country TAG.

## **7 FAM 1615 DEFINITIONS**

The following terms and definitions used in this chapter are essential to understanding the extradition process:

- (1) "Escort agent" means the U.S. or foreign law enforcement officer(s) who have authority to take custody of the fugitive being extradited and return that person to the requesting State;
- (2) "Escort agents' warrant" means the document signed by the Legal Adviser of the Department of State naming and authorizing U.S. escort agents to receive a specified fugitive from a requested foreign state and return the fugitive to the United States;
- (3) "Extraditable offense" means a crime or infraction of law for which a person may be extradited to the requesting state;
- (4) "Extradition" means the surrender or return of an alleged criminal or fugitive from justice by one sovereign power or state to another;
- (5) "Fugitive" means a person who, having committed or been accused of crime in one jurisdiction, has fled to or taken refuge in another jurisdiction to avoid trial before a court of law, punishment, or service of a sentence;
- (6) "Judicial hearing" means a court proceeding to determine whether the fugitive should be found extraditable, and also may include any subsequent judicial review proceedings;
- (7) "Provisional arrest" means arrest of a fugitive whose extradition is being sought to prevent escape while extradition documents and supporting evidence are being prepared;
- (8) "Surrender warrant" means the document, usually signed by the Deputy Secretary of State, on the basis of a judicial finding of extraditability, authorizing the United States Marshal having custody of a fugitive to surrender that fugitive to the escort agents of the requesting foreign state; and
- (9) "Treaty in force" means a treaty, agreement, or arrangement in effect between the United States and another state.

## **7 FAM 1616 COMMUNICATIONS**

a. Because the time element is crucial in many extradition cases, send all communications by telegram except when documents must be transmitted.

b. Documents other than telegrams generally are sent to and from Foreign Service posts by commercial express courier service.

c. Both the Department and posts usually send provisional arrest telegrams as administratively controlled messages for the protection of their contents until the arrest takes place. Subsequent post reporting is unclassified, except in special cases.

**NOTE:** Exhibits of telegrams in this FAM volume must be unclassified. Posts should use appropriate classification whenever passing information that needs to be safeguarded.

## **7 FAM 1617 THROUGH 1618 UNASSIGNED**